

## REMARKS

Applicant thanks the Examiner for the careful consideration given the present application, and respectfully requests favorable reconsideration of the application in view of the comments set forth below.

### *Claim Rejections – 35 U.S.C. §112, ¶2*

Claim 24 was rejected as being indefinite. However, claim 24 has been amended to positively recite the containers in combination with the claimed package, thus rendering that claim definite under 35 U.S.C. §112, ¶2.

### *Claim Rejections – 35 U.S.C. §102(b or e)/103(a)*

Claims 1-16 and 22-24 stand rejected under 35 U.S.C. §102(b or e) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as being obvious in view of McElwee (US 2,659,524) (hereinafter “McElwee”) or Sutherland (US 5,669,500) (hereinafter “Sutherland”). However, Applicant respectfully submits that both McElwee and Sutherland, alone or in combination with each other, fail to teach every feature of the invention as claimed.

Specifically with regard to claim 1, Applicant respectfully submits that both McElwee and Sutherland fail to teach, suggest or otherwise render predictable “two upper flaps, each extending from an opposite one of the side panels, folded in an inward direction from the side panels to at least partially overlap each other” as claimed. As specified by claim 1, these two upper flaps collectively form an upper panel that is substantially parallel to the bottom panel above the containers. The overlapping upper flaps forming the upper panel is advantageous because it allows the package to be formed from a thin starting blank to minimize the amount of material and, accordingly, the overall cost required to form the package. It is possible that the thickness of the starting blank is not sufficient, by itself, to support the weight of the package. But since the two upper flaps overlap to double the thickness of the resulting upper panel, the upper panel is sufficiently strong to support the weight of the package without requiring a heavy gauge blank to be used, thereby minimizing the amount of material and cost to form the package. It is submitted that the inventor has recognized that the upper panel is the “bottleneck” with respect to the strength of the package. The side panels and even the bottom panel can be thin, as long as the upper panel from which the package is to be carried is sufficiently strong. In the present invention this has been inventively solved by doubling (at least) the thickness in that part, and the interconnection of at least two of said flaps forming the upper panel from which the package is to be carried.

According to McElwee, “[o]ne of the side wall members (2) is provided at its free outer edge with a top forming flap member 7 having lines of cut-scores or perforations 8, 8, 8 joining a folding score 9 defining the top edge of the side wall a member 2 and providing a rupturable panel or flap to form an access opening to the interior of the finished carton...” Col. 2, lines 44-51. Thus, McElwee teaches a

single upper flap extending from one of the side wall members. There is no other upper flap that overlaps the single upper flap in McElwee. And providing a second, overlapping upper flap to the carton in McElwee would also not be obvious to one of ordinary skill in the art because doing so would render the carton in McElwee unsatisfactory for its intended purpose, contrary to M.P.E.P. §2143,01(V). A second, overlapping upper flap provided to the carton in McElwee would obstruct the access opening provided to the single upper flap in McElwee that can be opened by users of the "rupturable pane or flap." If the access opening is obstructed users would not be able to extract the contents of the McElwee carton through the access opening.

Likewise, Sutherland also fails to teach, suggest or otherwise render predictable the "two upper flaps, each extending from an opposite one of the side panels, folded in an inward direction from the side panels to at least partially overlap each other" recited in amended claim 1. A single, "top panel 14" is connected to a "glue flap 50" by "fold line 48." Once again, the single top panel 14 of Sutherland extends entirely across the top of the package disclosed therein, and the glue flap 50 is glued to the interior-facing side of the opposite side panel. Accordingly, Applicant respectfully submits that Sutherland also fails to teach overlapping upper flaps.

Further, one of ordinary skill in the art would not be motivated to include a second, overlapping upper flap as claimed to the teachings of Sutherland for reasons similar to those for McElwee. In Sutherland the (one, single) upper flap folds over the upper array of bottles and has a glue flap attached to it, which is glued to the upper part of the side panel. Sutherland lacks two upper flaps, both of which are folded over the bottles, similar to McElwee. In this field it would be highly unlikely one of ordinary skill would add flaps and other parts to existing packaging, unless they would have very special reasons, which are neither given in nor suggested by either McElwee or Sutherland.

In the present invention, for example, two upper flaps and four top flaps can be folded over the bottles, where after the upper flaps and/or the top flaps are glued to each other (at least to one or two of the other flaps). This results in a multi layer top panel which therefore is reinforced, allowing the material from which the blank is made to be relatively thin. This results in a serious reduction in weight, especially considered with respect to containers full of such packages. The top panel will be the panel from which the package is carried, so this has to be among the strongest. Reduction of weight of the blank also reduces cost for the blank, makes folding easier, may reduce glue cost etc.

In McElwee the carrying strength does not play a role with respect to the top panel since here the carrying flap (with openings) is a direct extension of the side panel, so all carrying forces will substantially be led through to said side panel. In McElwee this will result in the package tilting about the fold line 14. In the present invention carrying openings can be provided in the top panel, so as to allow the package to be carried in a "straight up" fashion. Moreover, over McElwee this has the advantage that a closer packing of packages is possible, since the top panel will be flat, allowing a further package to be stacked upon it.

In Sutherland a carrying strap 40 (see fig. 12) is added to the package after it has been made, by gluing a strap with both ends to opposite side panels of the package. As can be seen in fig. 11 and 12 of Sutherland, the strap 40 is glued to the side panels between short score lines, allowing part of the side and top panel to be bent out of shape when lifting the strap. This solution is disadvantageous for several reasons. First, it adds material to the package. Secondly, it necessitates an extra step in the process. Thirdly, this (especially the score lines) reduces the strength of the package, whereas the full weight of the package will have to be transferred to the strap over two very small material areas (the cross section of the strap) which means that the material of the strap and the glue connection have to be very strong, hence costly. Fourth, the strap can get caught when handling the package before lifting it by the strap, damaging the package before it reaches the customer.

For at least the above reasons, McElwee and Sutherland both fail to teach every limitation found in amended claim 1 as required to maintain a rejection of that claim under 35 U.S.C. §102(b or e) or under 35 U.S.C. §103(a). Further, since claims 2-7, 22 and 23 depend from claim 1, those claims are neither anticipated by, nor rendered obvious by McElwee or Sutherland for the purposes of 35 U.S.C. §102(b or e) and 35 U.S.C. §103(a).

Regarding claim 8, Applicant respectfully submits that claim 8 is neither anticipated by, nor rendered obvious by McElwee or Sutherland, alone or even if combined, for reasons analogous to those given above for claim 1. More specifically, McElwee and Sutherland both fail to teach, suggest or otherwise render predictable first and second upper flaps "to be folded in inward directions about the fifth fold lines to collectively form an upper panel above that is substantially parallel with the bottom panel." Additionally, both McElwee and Sutherland also fail to teach, suggest or otherwise render predictable that the first and second upper flaps include dimensions suitable to allow the first and second upper flaps to at least partially overlap each other over a region of the bottom panel that is to support the containers when placed within the package.

As explained above, both McElwee and Sutherland each utilize a single upper flap that extends entirely over containers to, by itself and without another overlapping upper flap, form the top of their respective packages. It follows that McElwee and Sutherland also fail to teach the claimed dimensions of the first upper flap and the non-existent second upper flap.

For at least the above reasons, McElwee and Sutherland both fail to teach every limitation found in amended claim 8 as required to maintain a rejection of that claim under 35 U.S.C. §102(b or e), or under 35 U.S.C. §103(a). Further, since claims 9-16 depend from claim 8, those claims are neither anticipated by, nor rendered obvious by McElwee or Sutherland for the purposes of 35 U.S.C. §102(b or e) and 35 U.S.C. §103(a).

New claims 25 and 26 requiring an aperture formed in each of the upper flaps that are aligned when the upper flaps are folded inward have been added by way of this amendment. McElwee and Sutherland also fail to teach every limitation found in these new claims as required to maintain a rejection of those claims under 35 U.S.C. §102(b or e), or under 35 U.S.C. §103(a). Neither McElwee or

Sutherland teach the aligned apertures formed in the top panel of the package that is substantially parallel with the bottom of the package as claimed.

The remaining claims in the present application are allowable for the limitations therein and for the limitations of the claims from which they depend.

In light of the foregoing, it is respectfully submitted that the present application is in condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If any further fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. VOB-38838.

Respectfully submitted,  
PEARNE & GORDON LLP

By   
John P. Murtaugh, Reg. No. 34226

1801 East 9<sup>th</sup> Street, Suite 1200  
Cleveland, OH 44114-3108  
Phone: 216-579-1700

Date: 12-21-09